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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,335	07/31/2001	Thomas E. Anderson	41007.P006	4127
29127	7590	03/17/2006	EXAMINER	
HOUSTON ELISEEVA 4 MILITIA DRIVE, SUITE 4 LEXINGTON, MA 02421			PWU, JEFFREY C	
			ART UNIT	PAPER NUMBER
			2143	
DATE MAILED: 03/17/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/920,335

**Applicant(s)**

ANDERSON ET AL.

**Examiner**

Jeffrey C. Pwu

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 5, 6, 17, 18, 21, 22, 31, 32, and 37-39 are rejected under 35 U.S.C. 102(e) being anticipated by Foster et al. (US. 2003/0202536, "Foster", hereafter).

3. Regarding claims 1, 6, 17, 22, 31, 32, and 37-39, Foster discloses a method comprising: determining by a first network management device, separate and distinct from a first networking device of a network, whether the first networking device is meeting a service level for a first group of network traffic of the network serviced by the first network device; and regulating a second group of network traffic of the network, also being serviced by said first networking device, to assist the first networking device in meeting the service level for the first group of network traffics the second group of network traffic being separate and distinct from said first group of network traffic (network manager 357, figure 3A, controls connection to ensure sufficient resource available for one by limiting the other, ¶69).

4. Regarding claims 2 and 18, Foster discloses the method of claim 1, wherein said service level is a selected one of a service level goal and a service level commitment of said first networking device for said first group of network traffic of the network serviced by said first networking device (service level is in accordance with class of service (COS), which, among other factors, guarantee level of bandwidth, ¶69).

5. Regarding claims 5 and 21, Foster discloses networking device is routing device (Foster teaching related directly to network switches or routers, ¶20).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 4, 7-16, 19, 20, 23-30 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster, as applied to claim 1, above.

8. Regarding claims 3, 4, 10-16, 19, 20, 26-30 and 34-36, Foster discloses the invention substantially, as claimed, including an inventive concept that is applicable for assessing network resource and limiting a network traffic to guarantee level of service QOS or to accommodate another network traffic to meet the QOS level. To apply Foster's inventive concept to regulate

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network traffic from one group over another, regardless of distinction, separation, same or different sources or destinations, would have been obvious tone of ordinary skill in the art that was a matter of implementation choice, which depend upon individual desirable, do not produce unexpected result.

9. Regarding claims 7-9 and 23-25 Foster discloses the invention substantially, as claimed, as described in claim 6, including an inventive concept that is applicable for assessing network resources and limiting a network traffic to guarantee level of service QOS or to accommodate another network traffic to meet the QOS level. To apply Foster's inventive concept to regulate network traffic from one group over another, regardless of where the monitoring function has been performed, or selecting reliability or service level or performing monitoring and regulating from the same or different devices, would have been obvious tone of ordinary skill in the art that was a matter of implementation choice, which depend upon individual desirable, do not produce unexpected result.

#### ***Response to Arguments***

10. Applicant's arguments filed 12/17/2005 have been fully considered but they are not persuasive. Applicant is not sure of Foster's provisional application filing date effective. The examiner hereby furnish a copy of Provisional Application (60/287,075).

Paragraph [0020] "In some embodiments in which virtual identifiers are assigned to paths through a network, the assignment of paths to such virtual path identifiers is performed in a dynamic fashion after an indication is received that a data communication is to occur, such as by

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the network manager upon receipt of a data communication registration. The assigning of a virtual path identifier to a path can include the configuring of each of one or more intermediate routing devices (e.g., routers or switches) along the path to the destination, such as by the network manager, so that when one of the routing devices receives a data communication that includes the virtual identifier it will forward the communication in an appropriate manner either directly to the destination or instead to a next routing device along the path that is similarly configured.” is supported by the disclosure of pages 33-47, 53-54, 71-77, and 146-167.

Paragraph [0069] “The discussed techniques also allow a QOS model to be used in some embodiments so that various types of QOS guarantees can be provided, such as to bandwidth, latency, jitter, and/or availability. The use of configurable label tables by switches allows a network manager to control how many and which communications will pass through each link on each switch, and thus the network manager can ensure that sufficient bandwidth is available for a communication by limiting the other communications that use any of the same links. The network traffic can also be monitored so that allocations of communications to links can be adjusted as needed. This allows guaranteed bandwidth for virtual connections in which a dedicated physical connection is not used. In addition, hunt groups between switches can also be used to provide a minimum level of bandwidth by providing alternative paths for communications. The transmission priority assigned to data communications can be used to control how quickly those communications pass through intermediate routing devices, and thus can be used to control both latency and jitter. In addition, varying the COS assigned to data communications allows guarantees to be made as to delivery, and can also be used to affect latency and jitter if different COSes are given different priorities by intermediate routing devices.

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Finally, the management of paths assigned to virtual identifiers, both initially and during reconfiguration based on monitoring, allows guarantees to be made for various QOS parameters. Those skilled in the art will appreciate that these various techniques can be combined in any logical combination.” is supported by the disclosure of pages 259-268.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey C. Pwu whose telephone number is 571-272-6798.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



2/20/06

**JEFFREY PWU**  
**PRIMARY EXAMINER**